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Please deliver the following pages to:

Name: Examiner Teri Luu
Phone Number: 703.605.4328
Company: U.S. Patent and Trademark Office - GAU 3651
Facsimile: 703.605.0586
From: Glenn D. Smith Direct Telephone: 716.848.1642
Total Pages: 7 (including cover page)
Today's Date: June 25, 2003
Comments: Re: Applicant : Dieter GULDENFELS, et al.
Serial No. : 09/909,447
Filing Date : July 19, 2001
Title : Snap-on Side Guards
Atty. Docket : 31529.0011

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JUN 25 2003
GROUP 3600

Examiner Luu:

Attached please find a Petition to Withdraw Holding of Abandonment (2 pages), copy of Reply to Restriction Requirement dated September 25, 2002 (3 pages), and a Statement of Barbara Haggerty. Please contact Glenn D. Smith at (716) 848-1642 if there are any questions.

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June 25, 2003

Date

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File No: 31529.0011

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Attorney Docket No. : 31529.0011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Group Art Unit : 3651
Examiner : Rashmi K. Sharma

Application of	:	Dieter GULDENFELS et al.
Serial No.	:	09/909,447
Filing Date	:	July 19, 2001
Title	:	SNAP-ON SIDE GUARDS

**PETITION TO THE COMMISSIONER UNDER 37 C.F.R. §1.181(A)
TO WITHDRAW HOLDING OF ABANDONMENT**

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attn: Teri Luu, Special Programs
Examining Unit

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JUN 25 2003
GROUP 3600

Sir:

This is a Petition to Withdraw the Holding of Abandonment of the above-identified patent application. The facts of such abandonment are as follows. A telephone call from Examiner Luu, received by this office on June 18, 2003, informed us the above-identified patent application went abandoned for "failure to reply to the restriction requirement." However, the Applicants did reply to the restriction requirement. Enclosed please find the following, showing submission of the Reply to the Restriction Requirement:

- 1) Copy of the Reply to the Restriction Requirement dated September 25, 2002; and
- 2) Statement of Barbara Haggerty attesting to the timely mailing of the response based on personal knowledge.

Serial No.: 09/909,447

Attorney Docket No.: 31529.0011

Accordingly, it is respectfully requested that the holding of abandonment of the above-identified patent application be withdrawn. Acknowledgement of the active status of this application is respectfully requested.

It is believed no fee is due with this Petition. If, however, a fee is due, the Commissioner is hereby authorized to deduct the fee from Deposit Account No. 08-2442 of the undersigned.

Respectfully submitted,
HODGSON RUSS LLP
Attorneys for Applicants

By: 

Glenn D. Smith
Reg. No. 42,156

Date: June 25, 2003

HODGSON RUSS LLP
One M&T Plaza, Suite 2000
Buffalo, New York 14203-2391
(716) 856-4000

Enclosures: Reply to Restriction Requirement dated September 25, 2002
Statement of Barbara Haggerty

BFLODOCS: 827346 v1 (HQD%011.DOC)

Attorney Docket No.: 31529.0011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Group Art Unit : 3651

Examiner : Rashmi K. Sharmat

Applicant	:	Dieter Guldenfels et al.
Serial No.	:	09/909,447
Filing Date	:	July 19, 2001
Title	:	SNAP-ON SIDE GUARDS

**STATEMENT ATTESTING TO MAILING OF PTO CORRESPONDENCE
UNDER 37 CFR 1.8(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, V.A. 22313-1450

Sir:

I state that on September 25, 2002, I mailed the original of the attached copy of correspondence and Certificate of mailing by first class mail, with sufficient postage, in an envelope addressed to the "Assistant Commissioner for Patents, Washington, DC 20231."

Barbara Haggerty

Name of person making this statement

Date: June 25, 2003


Signature

31529.0011

I hereby Certify that this Correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on September 25, 2002

Barbara Haggerty

Name

Barbara Haggerty

Signature

September 25, 2002

Date of Signature

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Guldenfels et al.

Serial No.: 09/909,447

Filed: July 19, 2001

For: Snap-On Side Guards

Examiner: Unknown

Group Art Unit: 3651

Commissioner for Patents
Washington, DC 20231

copy of #5

REPLY TO RESTRICTION REQUIREMENT

Sir:

An Office Action dated September 3, 2002 has been received in connection with the above-identified patent application. The examiner has restricted this application under 35 U.S.C. 121 to three groups of claims:

- I Claims 1 - 7, drawn to a side guard;
- II. Claims 8 - 16, drawn to a modular belt system; and
- III. Claims 17 - 20, drawn to a method of forming a snap-on-guard.

31529.0011

Applicants respectfully request removal of this restriction requirement for failure to establish a *prima facie* case.

Restriction of the invention in an application may be appropriate if a patent application claims two or more "independent and distinct" inventions (35 U.S.C. §121). According to the MPEP, the term "independent" is interpreted to mean that "there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation, or effect" (MPEP §802.01, emphasis added). The instant application is directed toward a side guard for use with a belt module (claims 1-7), a modular belt system having the same side guard (claims 8-16) and a method of forming a snap-on side guard for a radius belt by assembling the belt modules and side guard of the above modular belt system (claims 17-20). The relationship of the claims is set forth in part in the summary of the invention: "[a] plurality of snap-on side guards are mounted in vertical openings disposed in the belt modules" (Specification, p. 3, lines 8-9). Therefore, the claims are at least related as a snap-on side guard for belt modules, belt modules having snap-on side guards, and method for forming a radius belt having snap-on side guards. Because of this "disclosed relationship of the two or more subjects disclosed", the independent prong of the "independent and distinct" requirement under 35 U.S.C. §121 for restriction of claims is not met. Therefore, the office action fails to establish a *prima facie* case for restriction of this application. Accordingly, the restriction requirement should be withdrawn.

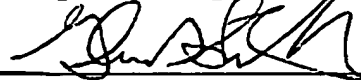
31529.0011

The office action indicates that the Invention of Group III is classified in class 198, subclass 617. Applicants believe this classification to be in error.

The Classification Definitions (December 2000 Edition) sets forth that subclass 617 of class 198 is "indented under the class definition. Method, , of conveying a load or load portion from one place to another" (Classification Definitions, p. 198-63). Because claims 17-20 are directed toward a "method of forming a snap-on side guard for a radius belt", it is improper for claims 17-20 to be placed in class 198, subclass 617.

For at least the reasons given above, Applicants respectfully traverse this restriction requirement. Notwithstanding the Applicants traverse of the restriction requirement, for the purpose of providing a complete reply to the restriction requirement, applicants elect for prosecution the claims of Groups II and III. Should the patent office not agree with applicants suggested reclassification of the claims of Group III, applicants elect the claims of Group II for prosecution.

Respectfully submitted,



Glenn D. Smith
Reg. No. 42,156

Hodgson Russ LLP
One M & T Plaza - Suite 2000
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September 25, 2002